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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/423,523 07/05/00 ISHINO

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EXAMINER

SERGEANT, R

ART UNIT

PAPER NUMBER

1711

DATE MAILED:

7
11/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/423,523

Applicant(s)

Ishino et al.

Examiner

Rabon Sergent

Group Art Unit
1711



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-4 _____ is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4 _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not quantitatively clear what content of the component within the composition is denoted by "chief".

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The second reference to "claim 1" is unnecessary.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Flesher ('024) or Werenicz et al. ('887) or WO 96/15174 or Kaplan et al. (The Effect of Polymer Structure on the Gas Permeability of Model Polyurethanes).

The references disclose ether segment containing polymers which are permeable to gases. See abstracts within Flesher and Werenicz et al. See pages 246 through 255 within Kaplan et al. In view of the use of ether segments and the disclosed gas permeability properties, the position is taken that the films of the references inherently meet applicants' claimed permeability properties. It is further noted that both Flesher and Werenicz et al. disclose that the films may be bonded to fabrics or other substrates. See column 3, lines 28-30 within Flesher. See abstract of Werenicz et al.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flesher ('024) or Werenicz et al ('887) or WO 96/15174, each in view of Pia ('951) and Rosner ('916).

As aforementioned, the primary references disclose the production of water vapor permeable films, but are silent regarding the use of the films as covers for compost heaps. As

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discussed within applicants' Background of the Invention and Rosner, the use of covers over compost heaps to prevent undue interference from weather conditions has long been known. Furthermore, Pia discloses that the covers over compost (used to spawn mushrooms) can be tailored or modified to control such conditions as oxygen, carbon dioxide, and water contents or exchange rates. Therefore, in view of the art recognized need to both protect compost piles from the elements and to control the environment of the compost, the position is taken that it would have been obvious to utilize gas permeable films, such as those disclosed by the primary references, as protecting covers for compost heaps.

Any inquiry concerning this communication should be directed to Examiner R. Sergent at telephone number (703) 308-2982.

Sergent/ph

November 10, 2000

Rabon Sergent
RABON SERGENT
PRIMARY EXAMINER